

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 23740 OF 2004

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Dated: 15-11-2005

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Between:

Smt. I.Sushila ...Petitioner

A N D

The Commissioner, Municipal Council,

Karimnagar town, Karimnagar district ...Respondent

THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

W.P.No. 23740 OF 2004

ORDER:

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1. This writ petition has been filed by the petitioner with a prayer to issue appropriate

writ, order or direction, more particularly a writ of mandamus, declaring the action of the respondent in interfering with the construction of the 1st floor and extension of ground floor of premises bearing No. 2-7-161 (old)/347 (New) of Mokarrampura locality, Karimnagar town, as illegal and void.

2. The petitioner claims that she is owner of house bearing No. 2-7-161 (old) 347 (New) comprising plot No. 86 and 7 (part) situated at Mukarrampura locality, Karimnagar town. According to her, she submitted an application for building permission on 12th April, 1988. She asserts that after waiting for a statutory period, she proceeded with the construction of ground floor and thereafter she submitted another application in the year 2002 for construction of first floor and for extension of the ground floor. Thereupon, the respondent Municipality insisted the petitioner to submit the approved plan of the ground floor under letter dated 7-2-2002. The petitioner without complying the objections taken by the respondent Municipality has chosen to approach this Court with a prayer stated supra by invoking jurisdiction under Article 226 of the Constitution of India.

3. Respondent filed counter affidavit. It is stated in the counter affidavit that the petitioner made an application for building permission along with two other joint owners without submitting proper plans and hence her application does not deserve consideration. I deem it appropriate to refer para 3 of the counter affidavit and it is thus:

“It is respectfully submitted that in reply to paras 2 and 3 of the affidavit, I submit that the petitioner has constructed a building without obtaining any valid permission violating the building rules and zoning regulations. The petitioner made an application for building permission along with two others jointly without submitting proper plans and hence cannot be accepted as the joint applications to make construction of residential buildings cannot be entertained. Payment of required fees is not sufficient without submitting the plans as per Building Rules and Zoning Regulations. The writ petitioner completed his unauthorized construction of ground floor in the year 1989. The petitioner has not left the set backs as required under zoning regulations”.

4. Heard learned counsel for the petitioner and learned standing counsel appearing for the respondent Municipality.

5. Learned counsel for the petitioner submits that the petitioner made application for

construction of ground floor in the year 1988 itself and after waiting statutory period, the petitioner proceeded with the construction of ground floor and therefore, the respondent Municipality is not justified in insisting the petitioner to place on record approved sanctioned plan to consider the application of the petitioner for permission to construct first floor and the extension of the ground floor. A further submission has been made that the ground floor constructed by the petitioner has been assessed to the property tax and therefore, the respondent Municipality is not justified in asking sanctioned plan for the ground floor to consider the application of the petitioner for construction of 1st floor and extension of ground floor.

6. Learned Standing counsel appearing for the respondent Municipality submits that the application filed by the petitioner was considered by the respondent Municipality and the petitioner was informed to submit the building permission plan. He refers the notice dated 16-1-1989 issued to the petitioner. The notice dated 16-1-1989 reads as follows:

“Sub:Municipal Council – Karimnagar – Town planning – Lay out – Layout plan NO. 486/85, at Survey No. 1104/D Mukarampura – Application of Smt. I. Susheela Plot No. 6 for payment of Development Charges – Intimation – Regarding.

Ref: 1. Application of Smt. I. Susheela, Dated 14-12-1988.

2. Municipal Council Resolution No. 101, Dt 30-6-1988.

With reference to the application cited, Smt. I. Susheela owner of Plot NO. 6 in L.P.No. 486/85 is hereby directed to pay an amount of Rs.4,749/- (Rupees four thousand seven hundred forty nine only) towards development charges with in (3) days from the date of receipt of this Notice and to submit Building Plans U/s 209 of Andhra Pradesh Municipalities Act, 1965 and to pay the required Building permission fee for taking further action.”

7. The notice dated 16-1-1989 is explicit that the petitioner was required to submit plan as provided under Section 209 of Andhra Pradesh Municipalities Act, 1965. Petitioner did not choose to submit the plan as required under the above referred provision. The petitioner having not submitted the plan as required under the provisions of A.P. Municipalities Act, 1965 is not justified in proceeding with the construction of the ground floor under deemed provision i.e. under 212 of the Hyderabad Municipal Corporation Act.

8. The application filed by the petitioner for construction of first floor and for extension of ground floor has been considered by the respondent Municipality and the petitioner has been directed to place on record the permission granted for ground floor.

9. In the circumstances of the case, the action taken by the respondent is justified.

10. in the result, I find that the Writ Petition is devoid of merits and it is accordingly dismissed. No order as to costs.

Justice B.Seshasayana Reddy

15th November,2005.

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THE HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

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